

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: YAN SUI

CASE NO. SA CV 18-2291 MWF

ORDER REMANDING
BANKRUPTCY COURT'S ORDER
GRANTING TRUSTEE'S MOTION
FOR SETOFF

Before the Court is an appeal from the United States Bankruptcy Court (the Honorable Catherine Bauer, United States Bankruptcy Judge). Yan Sui and Pei-yu Yang appeal from the Bankruptcy Court's Order Granting Trustee's Motion for Setoff. Pursuant to 28 U.S.C. § 158(a), the Court has jurisdiction over this appeal.

Appellants Yan Sui and Pei-yu Yang submitted an Opening Brief on August 6, 2019. (Docket No. 32). On September 4, 2019, Appellee Richard A. Marshack, the Chapter 7 Trustee ("Trustee"), submitted an Answering Brief. ("Answer" Docket No. 34). On September 9, 2019, Jess R. Bressi and Dentons LLP moved to join the Answer. (Docket No. 37). Appellants objected to the joinder. (Docket No. 39).

1 For the reasons discussed below, the Bankruptcy Court’s Order Granting
2 Trustee’s Motion for Setoff is **REMANDED**. The Bankruptcy Court did not
3 articulate a basis for granting the Setoff Motion.

4 5 **I. BACKGROUND**

6 The parties share an extensive history. For the purposes of this appeal, the
7 Court distilled their history down to the following relevant facts.

8
9 On July 27, 2011, Yan Sui filed a Chapter 7 voluntary petition. (Trustee’s
10 Supplemental Excerpts of Record (“TER”) 2). On June 4, 2015, the Bankruptcy
11 Court issued an order granting Trustee’s Motion for an Order Authorizing Sale of
12 Real Property (“Sale Order”). (TER 60). The net proceeds of the sale were
13 \$329,093.43 and Yang was entitled to a portion of the proceeds. (Answer at 4, 7).

14 Appellants were held in contempt and ordered to pay civil sanctions, jointly
15 and severally, for their efforts to thwart the sale of the property in violation of the
16 Sale Order. (Answer at 5). Trustee moved to offset the costs of the sale proceeds to
17 be paid to Yang against the civil sanctions she owed. (Answer at 7).

18
19 Trustee filed a total of three setoff motions. (Answer at 8). Trustee filed the
20 first setoff motion on December 28, 2015. (TER 70). The Bankruptcy Court
21 granted that motion on February 19, 2016, and Appellants appealed to the BAP on
22 March 1, 2016. (TER 71-72). On July 26, 2016, the BAP vacated one of the
23 sanctions orders on which the first setoff order was based, and therefore also vacated
24 and remanded the first setoff order. (TER 86). Trustee filed a second setoff motion
25 on August 7, 2018, which the Bankruptcy Court granted on August 30, 2018. (TER
26 94). On September 12, 2018, Appellants filed a motion for withdrawal of the
27 second setoff order. (Answer at 8). The Bankruptcy Court granted Appellants’
28 motion for withdrawal on October 19, 2018. (Answer at 8). On November 6, 2018,

1 Trustee filed a third setoff motion (the “Setoff Motion”) that the Bankruptcy Court
2 granted on December 4, 2018. (Answer at 8). Appellants then commenced this
3 appeal on December 27, 2018. (Docket No. 1).

4 5 **II. STANDARD OF REVIEW**

6 A district court reviews a bankruptcy court’s conclusions of law de novo and
7 its findings of fact for clear error. *See, e.g., In re Int’l Fibercom, Inc.*, 503 F.3d 933,
8 940 (9th Cir. 2007). Pertinent to this appeal, a bankruptcy court’s decision to
9 authorize a setoff is reviewed for abuse of discretion. *See In re Brown & Cole*
10 *Stores, LLC*, 375 B.R. 873, 877 (B.A.P. 2007) (“We review decisions to allow or
11 disallow setoff under § 553 for abuse of discretion.”).

12
13 A bankruptcy court abuses its discretion if it applies the wrong legal standard,
14 misapplies the correct legal standard, or its factual findings are clearly erroneous.
15 *See United States v. Hinkson*, 585 F. 3d 1247, 1262 (9th Cir. 2009) (“[T]he first step
16 of our abuse of discretion test is to determine de novo whether the trial court
17 identified the correct legal rule to apply to the relief requested.”). Factual findings
18 are clearly erroneous if they are “illogical, implausible, or without support in
19 inferences that may be drawn from the record.” *Id.*

20 **III. REQUESTS FOR JUDICIAL NOTICE**

21
22 In conjunction with its Answer, Appellee requests the Court take judicial
23 notice of three documents: (1) the Bankruptcy Court’s Order Granting Motion for
24 Entry of Amended Pre-Filing Order; (2) the Ninth Circuit’s Pre-Filing Review
25 Order; and (3) the District Court’s Civil Minutes from a civil action Appellants
26 filed, Case No. 13-cv-01607-JAK. (*See* Docket No. 40). Appellee’s Request for
27 Judicial Notice is unopposed.
28

1 Appellants also submitted a request for judicial notice for Appellants' Notice
2 of Appeal from the Pre-Filing Order. (*See* Docket No. 42).

3
4 Judicial notice is appropriate under Federal Rule of Evidence 201 for facts
5 "not subject to reasonable dispute," because they are either "generally known within
6 the trial court's territorial jurisdiction" or "can be accurately and readily determined
7 from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.
8 201(b). Judicial notice is also appropriate for documents on which the complaint
9 necessarily relies, and for matters of public record, provided the authenticity is not
10 contested. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001).

11 The Court deems the documents Appellee submitted as readily verifiable
12 court filings appropriate for judicial notice. *See Reyn's Pasta Bella, LLC v. Visa*
13 *USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of
14 court filings and other matters of public record."). Accordingly, Appellee's
15 Requests for Judicial Notice are **GRANTED**. Appellants' Request for Judicial
16 Notice does not attach the actual notice, but rather provides a brief memorandum
17 from Appellants about the notice and includes a case number. Appellants' Request
18 for Judicial Notice is not a matter of public record or of a readily verifiable court
19 filing, therefore Appellants' Request for Judicial Notice is **DENIED**.

20 **IV. DISCUSSION**

21
22 Appellants raise a plethora of arguments and issues, which they have litigated
23 numerous times, despite a pre-filing order that bars them from raising the same
24 issues. In light of that pre-filing order, the Court will only consider whether the
25 Bankruptcy Court abused its discretion in granting Trustee's Setoff Motion.

26
27 Under 11 U.S.C. § 553, setoff refers to the right of a creditor to offset a
28 mutual debt with the debtor. *See Citizens Bank of Md. v. Strumpf*, 516 U.S. 16, 19

1 (1995). To invoke the right of setoff under section 553, three requirements must be
2 satisfied: “(1) the debtor owes the creditor a prepetition debt; (2) the creditor owes
3 the debtor a prepetition debt; and (3) the debts are mutual.” *In re Tenderloin*
4 *Health*, 849 F. 3d 1231, 1241 (9th Cir. 2017) (internal quotations omitted).

5
6 Here, since neither the Setoff Motion nor the Bankruptcy Court’s Order
7 granting the Setoff Motion specifically invokes section 553, it remains unclear
8 whether that is the provision the Bankruptcy Court relied on in granting the Setoff
9 Motion. The Bankruptcy Court may have exercised its discretion to authorize a
10 setoff as to post-petition debts, but that is not articulated in the Order. *See 3 Collier*
11 *Bankr. Practice Guide* ¶ 66.12 (2019). The only explanation the Bankruptcy Court
12 provided for its decision to grant the Setoff Motion is that it read and considered the
13 papers the parties submitted and heard and considered the arguments made during
14 the hearing. Specifically, the Bankruptcy Court stated:

15 “The Court having read and considered the Motion, the opposition filed by
16 Debtor and non-debtor, Pei-yu Yang (“Ms. Yang”), the Trustee’s reply, and
17 the surreply filed by Debtor and Ms. Yang, having heard and considered the
18 arguments made on the record during the hearing, and with good case shown,

19 IT IS ORDERED:

20 1. The Motion is granted.”
21

22 The Court will not speculate as to the Bankruptcy Court’s grounds for
23 granting the Setoff Motion or whether the requirements under section 553 were met.
24 It is apparent Appellants have an affinity for litigation. Nonetheless, because the
25 Bankruptcy Court did not clearly provide a basis for granting the Setoff Motion, the
26 granting of the Setoff Motion is **REVERSED**.
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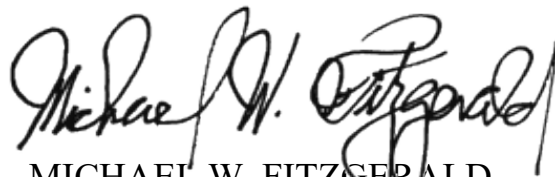
1 The Court remands for the application of the appropriate standards for
2 determining whether to grant a setoff.

3
4 **V. CONCLUSION**

5 For the reasons discussed above, the Court **REMANDS** the Bankruptcy
6 Court's Order Granting the Trustee's Motion for Setoff.
7

8 IT IS SO ORDERED.

9 DATED: March 5, 2020

A handwritten signature in black ink, appearing to read "Michael W. Fitzgerald", written over the printed name.

11 MICHAEL W. FITZGERALD
12 United States District Judge
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14 CC: Bankruptcy Court
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